

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRANDON T. DALBY,

Plaintiff,

v.

QUALITY LOAN SERVICE  
CORPORATION; et al.,

Defendants.

2:11-CV-1220-LRH-PAL

ORDER

Before the court are defendants Saxon Mortgage Services, Inc. (“SAXON”); Mortgage Electronic Registration Systems, Inc. (“MERS”); and Deutsche Bank National Trust Company’s (“Deutsche Bank”) motion to dismiss (Doc. #6<sup>1</sup>) and motion to expunge lis pendens (Doc. #7) to which defendant Quality Loan Service Corporation (“QLS”) joined (Doc. #10). Pro se plaintiff Brandon T. Dalby (“Dalby”) filed an opposition (Doc. #13) to which moving defendants replied (Doc. #14).

**I. Facts and Procedural History**

On January 5, 2007, Dalby purchased real property through a mortgage note and deed of trust executed by non-party Best Rate Funding Corp. (“Best Rate”). Dalby defaulted on the loan and defendants initiated non-judicial foreclosure proceedings.

<sup>1</sup> Refers to the court’s docketing number.

1 Subsequently, on July 6, 2011, Dalby filed a complaint against defendants alleging twelve  
2 causes of action: (1) negligent misrepresentation; (2) false representation; (3) fraudulent  
3 misrepresentation; (4) and (5) fraudulent attempt to sell; (6) fraudulent misrepresentation;  
4 (7) through (11) recording false documents; and (12) injunctive and declaratory relief. Doc. #1,  
5 Exhibit A. Thereafter, moving defendants filed the present motions to dismiss and to expunge  
6 lis pendens. Doc. ##6,7.

## 7 **II. Legal Standard**

8 Defendants seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure  
9 to state a claim upon which relief can be granted. To survive a motion to dismiss for failure to state  
10 a claim, a complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading  
11 standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That  
12 is, a complaint must contain “a short and plain statement of the claim showing that the pleader is  
13 entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not require  
14 detailed factual allegations; however, a pleading that offers “‘labels and conclusions’ or ‘a  
15 formulaic recitation of the elements of a cause of action’” will not suffice. *Ashcroft v. Iqbal*, 129 S.  
16 Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

17 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,  
18 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting  
19 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows  
20 the court to draw the reasonable inference, based on the court’s judicial experience and common  
21 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. “The plausibility  
22 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a  
23 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a  
24 defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to  
25 relief.” *Id.* at 1949 (internal quotation marks and citation omitted).

1 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as  
2 true. *Id.* However, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of  
3 the elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret*  
4 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)  
5 (internal quotation marks omitted). The court discounts these allegations because “they do nothing  
6 more than state a legal conclusion—even if that conclusion is cast in the form of a factual  
7 allegation.” *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) “In sum, for a complaint to survive a motion to  
8 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be  
9 plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

### 10 **III. Discussion**

#### 11 **A. Fraud Based Claims**

12 “In alleging fraud or mistake, a party must state with particularity the circumstances  
13 constituting fraud or mistake.” FED. R. CIV. P. 9(b). In order to meet the heightened pleading  
14 requirements a plaintiff must specify the time, place, and content of the misrepresentation as well  
15 as the names of the parties involved. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 n.10 (9th  
16 Cir. 1999); *see also, Parnes v. Gateway 2000*, 122 F.3d 539, 549-50 (8th Cir. 1997) (requiring a  
17 plaintiff to allege the requisite who, what, where, when, and how of the misrepresentation).

18 Here, Dalby fails to sufficiently allege any of his fraud and fraudulent misrepresentation  
19 claims. There are no specific allegations of who failed to provide information or what information  
20 was not provided. Further, Dalby fails to specifically allege the requisite “time, place, and specific  
21 content of the false representation as well as the identities of the parties to the misrepresentations.”  
22 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004). Therefore, the court finds that  
23 Dalby’s allegations are insufficient to support his fraud based claims.

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1 IT IS THEREFORE ORDERED that defendants' motion to dismiss (Doc. #6) and motion  
2 to expunge lis pendens (Doc. #7) are GRANTED. Plaintiff's complaint (Doc. #1, Exhibit A) is  
3 DISMISSED in its entirety.

4 IT IS FURTHER ORDERED that defendants Saxon Mortgage Services, Inc.; Mortgage  
5 Electronic Registration Systems, Inc.; and Deutsche Bank National Trust Company shall have ten  
6 (10) days after entry of this order to prepare an appropriate order expunging lis pendens and submit  
7 the same for signature.

8 IT IS FURTHER ORDERED that plaintiff Brandon T. Dalby shall have twenty (20) days  
9 after entry of this order to file an amended complaint.

10 IT IS SO ORDERED.

11 DATED this 28th day of September, 2011.



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14 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE  
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